UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

VERSUS

ASHLEY M. BROWN

CRIMINAL ACTION

NO. 18-107-JWD-RLB

RULING AND ORDER

This matter comes before the Court on the Motion to Suppress Evidence (Doc. 18) filed by Defendant Ashley M. Brown. The Government opposes the motion. (Doc. 25). On April 2, 2019, the Court held an evidentiary hearing. (Doc. 39). The parties then submitted post-hearing briefs (Docs. 42 & 46). After careful consideration of the parties' arguments, the facts in the record, and the applicable law, and for the following reasons, the defendant's motion (Doc. 18) is denied.

I. FACTUAL BACKGROUND

On October 8, 2018, Defendant Ashley M. Brown filed a motion to suppress (Doc. 18) evidence recovered in a warrantless search of her personal vehicle. Brown is a United States Postal Service ("USPS") mail carrier accused of unlawfully opening mail assigned to her route and taking its contents, including cash and gift cards. (*See* Doc. 1; Doc. 25 at 2–3). Specifically, the Government contends that on April 4, 2018, USPS agents received a tip that certain gift cards contained in a letter were not delivered to their intended recipient. (Doc. 41 at 5–6). The letter was assigned to Brown's mail route. (*Id.* at 5). On April 10, special agent Brandon Tullier, with the USPS Office of Inspector General, prepared a letter containing a $20 Target gift card addressed to an undeliverable address on Brown's mail route. (*Id.* at 6 & 16). Because the address was undeliverable, Brown should have placed the letter in the "Throwback Case," a file for undeliverable mail. (*Id.* at 7). She did not do so. (*Id.* at 7–8).

On May 9, 2018, Agent Tullier conducted a "live test" by placing in the mail five letters to be delivered by Brown. (*Id.* at 8). All five letters contained cash. (*Id.*). Three of the letters contained transmitters designed to alert agents if cash was removed from the letters. (*Id.*). That morning, Brown sorted mail and set out on her mail route. (*Id.* at 9–10). At 9:35 am, Brown opened one of the letters and removed the cash, triggering the transmitter. (*Id.* at 10). Agents followed Brown to Fred's on the River on Highway 42 in Prairieville, Louisiana. (*Id.* at 11). As Brown was walking from the establishment toward the passenger side of her vehicle, "close enough to almost put her hands on it," Tullier made contact with Brown. (*Id.* at 33). He informed her that agents were aware she had opened the mail and advised her of her *Miranda* rights. (*Id.* at 11). Brown stated that she understood her *Miranda* rights and indicated that she had opened four of the letters. (*Id.*). She then stated that the letters were on the floorboard of the vehicle, while the cash was in the sunshade. (*Id.*).

As Brown stood at the front of her vehicle, Tullier handcuffed her. (*Id.* at 20). He did not tell her that she was under arrest, but testified that she was not free to leave. (*Id.* at 20–21). After Brown stated that she opened the letters and disclosed their location, Tuller asked, "Do you mind if we go look?" (*Id.* at 34). Brown said "yes." (*Id.*). Tullier interpreted this response as permitting a search. (*Id.*). When asked why he didn't include this detail in his written report, Tullier explained that because he "had probable cause," he "didn't really need her permission" and therefore "didn't have a consent form filled out." (*Id.* at 35).

As Tullier opened the driver's side door, he discovered six opened letters—four of which were the "test letters" provided by the USPS agent. (*Id.* at 12). In the sunglass holder between the driver's and passenger's seats, Tullier found $210 in cash, $180 of which was from the test letters. (*Id.*). As Tullier searched the vehicle, Brown remained standing with another agent in front of the

car. (*Id.*). After recovering the opened letters and cash, agents conducted an interview with Brown during which Tullier again advised her of her *Miranda* rights with a written form. (*Id.* at 13).

After the Postmaster removed the remainder of the mail from Brown's vehicle, agents conducted a more thorough search and found an opened letter in the trunk of the vehicle. (*Id.* at 16). Agents also found several gift cards in the glove compartment and six open greeting cards on the dashboard. (*Id.*). On the passenger-side floorboard, agents discovered a bag containing 15 opened letters. (*Id.*). And in a fanny pack, agents discovered $184 in cash and "numerous" gift cards. (*Id.* at 17).

Brown testified that when she came out of the establishment on Highway 42, she heard her name, "looked up, and [saw] three agents coming towards [her]." (*Id.* at 43). She stated that she was on the driver's side of the vehicle and that agents informed her that she could not go back to her car and that they "had to check [her]." (*Id.*). She then walked toward the front of the vehicle where agents searched her person. (*Id.*). Brown stated that from where she was standing, she "wasn't close enough to even touch the car." (*Id.* at 44).

Brown further testified that from her "understanding, [she] wasn't asked permission" to search the vehicle, and was instead "told that [she] had to get the car searched." (*Id.* at 45). At that point, Brown gave agents the keys to the vehicle so they could unlock it. (*Id.*). She stated that she did not consent to the search and was "basically" told that agents had to search the vehicle. (*Id.*). She did not resist or attempt to impede the search. (*Id.* at 45–46).

II. PARTIES' ARGUMENTS

Brown argues that the warrantless search here was unreasonable under the Fourth Amendment because she was not within reaching distance of the vehicle while it was searched, and was actually detained by the agents. (Doc. 42 at 4). Because she was "not in a position to

affect any type of evidence which may be contained in the vehicle," the search was improper. (*Id.* at 3–4). Brown also points out that "she felt she had no choice in the matter regarding the vehicle search." (*Id.* at 3). Accordingly, all evidence seized during the search should be suppressed under the Fourth Amendment's exclusionary rule. (*Id.* at 4).

The Government argues primarily that the search was lawful because Brown voluntarily consented. Specifically, when agents approached her vehicle after she had triggered the transmitter, she "gave the Postal Inspectors authority to enter her vehicle to retrieve the contraband she acknowledged taking." (Doc. 25 at 4). Agents discovered several opened letters and their contents stored in the driver's side sunshade. (*Id.*). Agents then arrested Brown and searched her vehicle incident to arrest, discovering more letters. (*Id.*). The Government also asserts that agents had probable cause to arrest Brown after they discovered the opened letters and their contents in her vehicle. (*Id.* at 4–5; Doc. 46 at 5).

III. DISCUSSION

The Fourth Amendment guarantees that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. "As the text makes clear, the ultimate touchstone of the Fourth Amendment is 'reasonableness.'" *Riley v. California*, 134 S. Ct. 2473, 2482 (2014) (internal quotation marks omitted). "[T]he Supreme Court has determined that warrantless searches and seizures are per se unreasonable unless they fall within a few narrowly defined exceptions." *United States v. Cardenas*, 9 F.3d 1139, 1147 (5th Cir. 1993) (citing *Coolidge v. New Hampshire*, 403 U.S. 443, 454–55 (1971)). The government bears the burden of justifying a warrantless search. *United States v. Chavis*, 48 F.3d 871, 872 (5th Cir. 1995).

A. Consent

"It is well established that warrantless searches violate the Fourth Amendment unless they fall within a specific exception to the warrant requirement, and that consent is one of the specifically established exceptions to the requirements of both a warrant and probable cause." *United States v. Jaras*, 86 F.3d 383, 388 (5th Cir. 1996) (citations and internal quotation marks omitted). To demonstrate valid consent, the Government must show by a preponderance of the evidence that Brown's consent was voluntary. *Id.* at 389. "Absent any limitation placed by the suspect, [her] consent to search a car will support an officer's search of unlocked containers within it." *United States v. Cotton*, 722 F.3d 271, 276 n.16 (5th Cir. 2013).

Brown asserts that she did not consent to a search of her vehicle and did not think she had a choice in the matter, stating that she "was told that [she] had to get the car searched" and "had to give the keys." (Doc. 41 at 45). Agent Tullier testified that Brown consented to a search when he asked if she "minded" if agents "go look" for the letters in the vehicle she had just admitted she opened. (*Id.* at 34).

As an initial matter, the Court concludes that Agent Tullier's testimony was more credible than Brown's, and thus accepts his assertion that Brown consented to a search of her vehicle. Agent Tullier's testimony was thoroughly detailed, consistent, and objectively believable. Moreover, as the Government pointed out, Agent Tullier had testified during grand jury proceedings to Brown's consent, even though it was not included in his initial report. (*See* Doc. 41 at 40 (responding "Oh, yes, sir" in response to being asked "Now, you said you searched the car or what have you. [Brown] gave permission?")). On a motion to suppress, "credibility determinations are for the district court." *United States v. Santiago*, 410 F.3d 193, 198 (5th Cir.

2005). Here, the Court found Agent Tullier's testimony at the hearing to be objectively more credible than Brown's, and thus accepts his version of the events in question.

Whether "consent to a search was in fact 'voluntary' or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances." *Schneckloth v. Bustamonte*, 412 U.S. 218, 227 (1973). Courts in the Fifth Circuit apply a six-factor analysis to determine whether consent was voluntary. The factors are:

> (1) the voluntariness of the defendant's custodial status; (2) the presence of coercive police procedures; (3) the extent and level of the defendant's cooperation with the police; (4) the defendant's awareness of his right to refuse consent; (5) the defendant's education and intelligence; and (6) the defendant's belief that no incriminating evidence will be found.

United States v. Perales, 886 F.3d 542, 546 (5th Cir. 2018). Though all six factors are relevant to the voluntariness inquiry, "no single factor is dispositive." *United States v. Shabazz*, 993 F.3d 431, 438 (5th Cir. 1993).

Applying these factors, the Court concludes that Brown voluntarily consented to a search of her vehicle. The first factor asks whether a reasonable person in the defendant's position would have felt free to leave. *United States v. Cavitt*, 550 F.3d 430, 439 (5th Cir. 2008). By the time she consented to the search, Brown had already admitted to an offense (that she illicitly opened the letters in her vehicle) and had been directed to exit her vehicle. She also handed over the keys to the vehicle so that agents could unlock it. Under these circumstances, a reasonable person would not have felt free to leave. Accordingly, the first factor weighs against voluntariness.

The balance of the remaining factors weighs in favor of voluntary consent, however. There is no evidence that Agent Tullier or any other officer on the scene used any coercive procedures while questioning Brown. There is also no indication that any agent "used verbal threats or intimidation to" obtain Brown's consent to search the vehicle, or that a "constitutional defect preceded or accompanied" the request. *Perales*, 886 F.3d at 547. Nor is there evidence that any

agent had his or her weapon drawn. *See United States v. Mata*, 517 F.3d 279, 291 (5th Cir. 2008) (finding no coercion where officers did not have weapons drawn, threaten or yell at the defendant, or "treat him rudely"). Thus, the absence of any coercive police tactics militates strongly in favor of voluntariness. Moreover, Brown testified that she did not resist the officers in any way, and hearing testimony from both Tullier and Brown suggested that the encounter was a relatively mundane and uneventful one. These factors weigh heavily in favor of a finding of voluntariness.

The remaining factors either weigh slightly against voluntariness or are not applicable to the facts at hand. For example, there is no evidence in the record concerning Brown's level of education and intelligence or whether officers made her aware that she could refuse to consent to a search. And it is unlikely Brown legitimately believed that no incriminating evidence would be found, given both that officers descended on her location as soon as she removed the cash from the letters and she immediately admitted to doing so.

Nevertheless, based on the totality of the circumstances and the credible testimony of Agent Tullier, the Court concludes that Brown voluntarily consented to the search of her vehicle. *See United States v. Martinez*, 410 F. App'x 759, 764 (5th Cir. 2011) (finding voluntary consent where the defendant's "consent to the search was consistent with the rest of his behavior . . . because at no point did he fail to provide anything but complete cooperation"). And while Brown makes much of the fact that she did not believe she could refuse to consent, this is only one factor in the voluntariness inquiry. Because Brown voluntarily consented to a search, agents were permitted to open any unlocked containers in the vehicle. Brown's consent justified the warrantless search and Brown's motion to suppress could be denied on this basis alone.

B. Automobile Exception

Even in the absence of consent, however, the search of Brown's vehicle would have been proper under the automobile exception to the Fourth Amendment's warrant requirement. "Under the automobile exception, police may stop and search a vehicle without obtaining a warrant if they have probable cause to believe it contains contraband." *United States v. Beene*, 818 F.3d 157, 164 (5th Cir. 2016). A search under the automobile exception may extend to "compartments and containers within the automobile so long as the search is supported by probable cause." *California v. Acevedo*, 500 U.S. 565, 570 (1991). The scope of the search is "defined by the object of the search and the places in which there is probable cause to believe that it may be found." *United States v. Ross*, 456 U.S. 798, 824 (1982).

In *Collins v. Virginia*, the Supreme Court identified two key justifications for the automobile exception: the "ready mobility" of vehicles and "the pervasive regulation of vehicles capable of traveling on the public highways." 138 S. Ct. 1663, 1669–70 (2018). When these justifications "come into play, officers may search an automobile without having obtained a warrant so long as they have probable cause to do so." *Id.* at 1670 (internal quotation marks omitted). "Probable cause exists when there is a fair probability that contraband or evidence of a crime will be found in a particular place." *United States v. Grubbs*, 547 U.S. 90, 95 (2006) (internal quotation marks omitted). Whether an officer has probable cause to search "depends on the totality of the circumstances viewed in light of the observations, knowledge, and training of the law enforcement officers involved in the warrantless search." *United States v. McSween*, 53 F.3d 684, 686 (5th Cir. 1995) (internal quotation marks omitted).

Here, armed with the knowledge that several pieces of mail along Brown's route had not reached their intended recipients, agents placed test letters in the mail on two separate occasions.

The first time, the letter—which contained a Target gift card—was not placed in the receptible for undeliverable mail despite being deliberately addressed to an undeliverable address. The second time, the letters contained transmitters which were triggered, alerting agents that Brown had opened them and removed the cash inside. Accordingly, agents unquestionably had probable cause to believe Brown was tampering with mail and stealing its contents when they contacted her at her vehicle in Prairieville.

Brown cites to the Supreme Court's decision in *Arizona v. Gant*, which held that "[p]olice may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest." 556 U.S. 332, 351 (2009). Officers had not yet arrested Brown when they conducted the initial search, so Brown encourages the Court in briefing to travel under the first clause of *Gant's* holding.

Brown is mistaken. *Gant* applies only in two scenarios: (1) officers search a vehicle while an arrestee is within reaching distance of the passenger compartment, or (2) it is reasonable to believe the vehicle contains evidence of the offense of arrest. Brown is correct that she was not within reaching distance of the passenger compartment when she was restrained in handcuffs while standing at the front of the vehicle. But since she was not yet under arrest when agents searched her vehicle, *Gant* is inapposite. *United States v. Hinojosa*, 392 F. App'x 260, 262 (5th Cir. 2010) ("Because the officers' search of Hinojosa's vehicle was not made pursuant to arrest, *Gant* was inapplicable."); s*ee also United States v. Steele*, 353 F. App'x 908, 910–11 (5th Cir. 2009) (holding that *Gant* is inapplicable to automobile-exception cases and "did not modify the standards regarding searches pursuant to the automobile exception"). Accordingly, because agents had probable cause to believe that Brown had stolen the contents of U.S. mail when they arrived at

Brown's vehicle, the automobile exception applies to justify the agents' warrantless search of her car and any container or compartment within it that may have contained the illegally-opened letters.

III. CONCLUSION

Accordingly, for the foregoing reasons, **IT IS ORDERED** that the Motion to Suppress (Doc. 18) filed by Ashley M. Brown is **DENIED**.

Signed in Baton Rouge, Louisiana, on July 9, 2019.

JUDGE JOHN W. deGRAVELLES
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA